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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,742	03/04/2002	Yasushi Sugaya	614.1747CD2C	3699

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EXAMINER

MOSKOWITZ, NELSON

ART UNIT PAPER NUMBER

3663

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

CPB

Advisory Action	Application No. 10/086,742	Applicant(s) SUGAYA ET AL.	
	Examiner Nelson Moskowitz	Art Unit 3663	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

- 3. Applicant's reply has overcome the following rejection(s): _____.
- 4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
- 6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

- 8. The drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.
- 9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 10. Other: See Continuation Sheet

NELSON MOSKOWITZ
PRIMARY EXAMINER
 Nelson Moskowitz
 Primary Examiner
 Art Unit: 3663

Continuation of 5. does NOT place the application in condition for allowance because: the invention as so broadly claimed is disclosed by DiGiovanni et al at figure 1A and columns 1-3. In particular, this reference discloses two inline amplifiers (both numbered 1 with a level controller (VA) between them. The desideratum of a flatter gain profile (column 1) is presented. The attenuator is a level controller which controls the output level of the amplified signal. The amplified signal then further amplified by the next inline amplifier.

Applicant's argument that DiGiovanni et al relates to pump control of a chain of amplifiers, is not relevant as the broad pending claims are met by this reference. Furthermore, Applicant's arguments that this reference does not operate as a WDM system is in error. For example, column 4, lines 13-20, clearly state provide use of its systems in WDM systems. Similarly, column 1, lines 6-20, of this reference provides that patentee's invention is directed to systems operating with WDM.

10. continued: In regard to Applicants' arguments directed to the Examiner's request for statements of relevancy, Applicants are advise that the M.P.E.P. § 609. states the following with respect to large information disclosure statements:

"Although a concise explanation of the relevance of information is not required for English language information, applicants are encouraged to provide a concise explanation of why the English-language information is being submitted. Concise explanations (especially those that point out the relevant pages and lines) are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly relevant to patentability or where a large number of documents are submitted and applicant is aware that one or more is highly relevant to patentability." This statement is in accord with dicta from *Molins PLC v. Textron, Inc.*, 48 F.3d 1172 (Fed. Cir. 1995). That case presented a situation where the disclosure contained more than fifty references. *Id.* 1888.

A cursory glance at the M.P.E.P. also provides more support for this position. In a subsection entitled "Aids to Compliance With Duty of Disclosure," item thirteen states:

"It is desirable to avoid the submission of long lists of documents if it can be avoided. Eliminate clearly irrelevant information and marginally pertinent cumulative information. If a long list is submitted, highlight those documents which have been specifically brought to Applicant's attention and/or are known to be of the most significance. See *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc.*, 359 F.Supp 948 (S.D. Fla. 1972) *aff'd* 479 F.2d 1338 (5th Cir 1974)."

**NELSON MOSKOWITZ
PRIMARY EXAMINER**